

Remarks

In the Office Action mailed September 30, 2004 Claims 1-5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Oh et al., U.S. Patent No. 6,757,932.

In particular, Claim 1 was rejected solely on the Oh et al. reference and what appears to be the Examiner's personal opinion that it would have been obvious to provide a vacuum cleaner as taught by Oh et al. to provide an improved filter assembly. Claims 2 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Oh et al. in view of U.S. Patent No. 6,565,637 to Alberts, III et al. Claims 3 and 4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Oh in view of U.S. Patent No. 6,732,406 to Oh. The Oh et al. reference is the primary reference upon which the Examiner's rejection is based.

Under the plain language of 35 U.S.C. § 103(c), it was improper for the Examiner to reject the claims on the basis of Oh et al. Rejections under §103 that rely on the Oh et al. reference in any way, must be withdrawn.

35 U.S.C. § 103(c) states that:

"Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of Section 102 of this title, shall not preclude patentability under this section when the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."  
(Emphasis added.)

U.S. Patent No. 6,757,933 to Oh et al. is owned by the same company that owns the rights in the pending claims. Under the plain language of 35 U.S.C. § 103(c), the Oh et al. reference cannot be used by the Examiner as prior

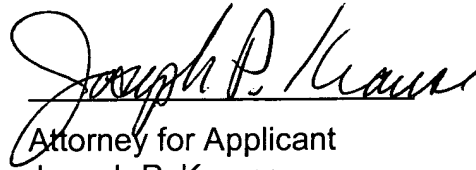
art upon which the pending claims can be rejected. Since the claim rejections rely on Oh et al., all of the rejections must be withdrawn.

For the reasons set forth above, the Applicant expects the rejections to be withdrawn and expects the claims to issue forthwith.

Respectfully submitted,

December 1, 2004

Date

A handwritten signature in cursive script, appearing to read "Joseph P. Krause", written over a horizontal line.

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